IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

SECOND APPEAL NO.1529 OF 2005

Vasant Damodhar Deokate .. Appellant

Versus

Ashok Shankar Deokate & Anr. .. Respondents

Mr.Oak with Ms.Nayana Thatte for appellant

Mr.A.P.Kulkarni for respondent No.1.

CORAM : S.C.DHARMADHIKARI, J.

DATE : 8th August 2007.

P.C.

. Heard Mr.Oak for appellants. The suit has been dismissed by the trial court and the decree is confirmed in the lower appellate court.

The submission before me is that the appellant was found to be in possession from 1973 till 1998-99 and, therefore, even if he is unable to establish his title in the property, his settled possession was enough to grant him protection against his eviction, save and except by due process of law.

2. It is not possible to accede to the submissions based upon the judgement of the Supreme Court in the case of Rame Gowda (dead) by Lrs. Vs. M.Varadappa Naidu (dead) by Lrs. and Anr., reported in (2004) 1 S.C.C. 769. Here the plaintiff has admittedly filed a suit on the basis of his title. Issues framed based upon the pleadings would clearly go to show that the contention put forward is that the plaintiff has become owner by adverse possession and injunction be granted upon declaration of ownership restraining the defendant - respondent from obstructing the possession of the suit property.

3. Neither the adverse possession is proved nor the obstruction. In these circumstances, the suit has rightly been dismissed.

4. The alternate argument is that possession is there on the basis of cultivation column entries in the 7/12 extracts. However, even that aspect has been noted in the lower appellate court's judgement and it is observed that the appellant plaintiff has not been in settled possession. There are entries which are intermittently appearing. However, the independent witnesses examined also do not indicate as to who put the appellant in possession. The inference drawn is that there was some transaction where monies were paid and whenever deceased was in need of money, he would get the same by executing some documents in favour of plaintiff. It was held not to be enough to prove the possession of the plaintiff

in the property.

5. It is in these circumstances that the ratio of the Supreme Court decision becomes inapplicable. There settled possession was held enough to restrain the true owner from dispossessing the party in possession, save and except due process of law. That decision was rendered in the context and backdrop of section 6 of Specific Relief Act and in which possession was made the basis of the claim. That ratio and decision is, therefore, distinguishable. There is, therefore, no substantial question of law involved. This Court is incapable of re-appreciating and re-appraising the evidence. Second Appeal is dismissed. No costs.

(S.C.DHARMADHIKARI, J)